

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1909

S.P. 679

In Senate, October 6, 1987
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 26.

Received by the Secretary of the Senate on October 6,
1987. Referred to the Committee on Banking and Insurance and
1,650 ordered printed pursuant to Joint Rule 14.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator PERKINS of Hancock.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Exempt the First Certificate of
2 Need Continuing Care Retirement
3 Community Demonstration Project from
4 Certain Requirements.
5

6 Emergency preamble. Whereas, Acts of the Legis-
7 lature do not become effective until 90 days after
8 adjournment unless enacted as emergencies; and

9 Whereas, the Department of Human Services adopted
10 and circulated Continuing Care Retirement Community
11 Demonstration Project regulations on April 16, 1987,
12 to solicit and review certificate of need proposals
13 to develop a Continuing Care Retirement Community in
14 the State, in order to select a proposal which is fi-
15 nancially feasible, has a fit, willing and able oper-
16 ator and offers contracts and financial information

1 which is in the best interest of future residents;
2 and

3 Whereas, after the applicants had already filed
4 applications for a certificate of need with the de-
5 partment under these rules and after the department
6 had already submitted a set of detailed follow-up
7 questions to the applicants, the Legislature enacted
8 Public Law 1987, chapter 482, "AN ACT to Afford Con-
9 sumer Protection in Retirement Communities which Of-
10 fer Continuing Care," which calls for the Bureau of
11 Insurance to promulgate detailed regulations relating
12 to, among other things, limits on financial reserves;
13 and

14 Whereas, a consultant that is necessary to draft
15 and apply these regulations has not been hired, and
16 it is therefore very unlikely that the regulations
17 can be drafted, published, adopted and applied to the
18 certificate of need demonstration project applica-
19 tions within the deadlines of the Certificate of Need
20 Act; and

21 Whereas, the consumer protection provisions in
22 Public Law 1987, chapter 482 are duplicative of those
23 contained in the certificate of need demonstration
24 project rules, to which the successful demonstration
25 project must comply; and

26 Whereas, requiring the successful certificate of
27 need demonstration project applicant to comply with
28 Public Law 1987, chapter 482, in addition to the cer-
29 tificate of need demonstration project rules, would
30 cause delay that would not permit the demonstration
31 project to go forward, a result totally contrary to
32 the purpose and intent of the certificate of need
33 demonstration project; and

34 Whereas, in the judgment of the Legislature,
35 these facts create an emergency within the meaning of
36 the Constitution of Maine and require the following
37 legislation as immediately necessary for the preser-
38 vation of the public peace, health and safety; now,
39 therefore,

40 Be it enacted by the People of the State of Maine as
41 follows:

1 24-A MRSA §6226 is enacted to read:

2 §6226. Exemption

3 Any applicant that is successful in obtaining ei-
4 ther a preliminary or final certificate of need from
5 the Department of Human Services for the first Con-
6 tinuing Care Retirement Community Demonstration
7 Project, pursuant and subject to Title 22, chapter
8 103, and the demonstration project rules as adopted
9 by the department on April 16, 1987, is exempt from
10 all requirements imposed by this chapter.

11 **Emergency clause.** In view of the emergency cited
12 in the preamble, this Act shall take effect when ap-
13 proved.

14 STATEMENT OF FACT

15 The applicant successful in obtaining a demon-
16 stration project of certificate of need for a contin-
17 uing care retirement community pursuant to regula-
18 tions adopted on April 16, 1987, by the Department of
19 Human Services, will be developing the first communi-
20 ty of this type in the State. Although there is one
21 other facility in the State that already offers con-
22 tinuing care, that facility does not, like the demon-
23 stration project, include a health center that is an
24 integral part of the community itself.

25 The certificate of need demonstration project is
26 already governed by certificate of need rules that
27 overláp significantly with the provision in Public
28 Law 1987, chapter 482, especially with regard to con-
29 sumer protection provisions. Notwithstanding, re-
30 quiring the successful demonstration project appli-
31 cant to comply with the terms of the law as well as
32 with the preexisting rules, will tremendously in-
33 crease the costs of developing the project and will
34 make it less likely that the demonstration project
35 will be developed at all, even once a certificate of
36 need has been obtained. Examples of particularly
37 unworkable provisions in the law include a require-
38 ment that the applicant obtain preliminary approval
39 of its certificate of need application prior to col-

1 lecting and placing in escrow any deposits from pro-
2 spective residents, as well as limiting the amount of
3 the deposit collected to 10% of the entry fee which
4 cannot be drawn upon by the applicant until 60% of
5 the units have been occupied. Both of these provi-
6 sions are more restrictive than those imposed by oth-
7 er states.

8 The Bureau of Insurance is required to develop
9 rules on the amount of financial reserves to be main-
10 tained by the community. These rules have not yet
11 been drafted and promulgated, and will not likely be-
12 come effective for several months. These uncertain-
13 ties make it impossible for the applicant to calcu-
14 late accurate reserve levels. As noted in the emer-
15 gency preamble, the Bureau of Insurance has not yet
16 retained a consultant to oversee the drafting and ap-
17 plication of these rules to the demonstration project
18 applicants.

19 The passage of Public Law 1987, chapter 482, has
20 changed the rules in the middle of the certificate of
21 need review process for the applicant seeking a cer-
22 tificate of need for the first Continuing Care Re-
23 tirement Community Demonstration Project in this
24 State. These changes make it so unlikely that a Con-
25 tinuing Care Retirement Community Demonstration
26 Project will be developed as to constitute an emer-
27 gency as explained in the emergency preamble.